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SUPREME COURT OF THE
UNITED STATES

STATE OF NEW MEXICO,
ex rel STATE HIGHWAY
DEPARTMENT OF NEW MEXICO,

Plaintiff-Appellee,

-vs-

RITA MOYA, et al, Alfonso
Sanchez & Cecilia Sanchez,

Defendants-Appellees,

HONORABLE ANTONIO CHAVEZ
and Richard V. Gose,

Defendants-Petitioners.

75-146

No._____

PETITION FOR CERTIORARI
from
SUPREME COURT OF NEW MEXICO

For Plaintiff:
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P.O. Box 1149
Santa Fe, New Mexico

For Defendants-
Appellees
Alfonso Sanchez &
Cecilia Sanchez:
Ronald Boyd
1966 Cerrillos Road
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For Defendants-
Petitioners
Honorable Antonio
Chavez & Richard V.
Gose:
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UNITED STATES SUPREME COURT

PETITION FOR CERTIORARI

1. (a) Reference to the official and unofficial reports of the opinions delivered in the Courts below (Exhibits "A" through "D" include all of such reports and opinions):

(i) Decision of the New Mexico Supreme Court dated January 15, 1976, attached and marked as Exhibit "A".

(ii) Mandate of the New Mexico Supreme Court dated January 28, 1976, attached and marked as Exhibit "B".

(iii) Findings of Fact and Conclusions of Law of New Mexico District Court dated March 31, 1975, attached and marked as Exhibit "C".

(iv) Judgment of New Mexico District Court dated March 31, 1975, attached and marked as Exhibit "D".

(b) Statement of grounds on which

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jurisdiction of the United States Supreme Court is invoked:

(i) The New Mexico Supreme Court issued and entered its Decision on January 15, 1976, from which these petitioners seek review of that New Mexico Supreme Court Decision.

(ii) No order was issued respecting a rehearing by the New Mexico Supreme Court for pursuant to the current Rules of the New Mexico Supreme Court no rehearing could be appropriately brought before the New Mexico Supreme Court as to its final Decision issued and filed on January 15, 1976, and attached as Exhibit "A".

(iii) The statutory provision conferring jurisdiction of the United States Supreme Court to review the Decision of the New Mexico Supreme Court attached as Exhibit "A" by Writ of Certiorari is Title 28, Section 1257 (3) "...the

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validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution of the United States...".

(c) The questions presented for review are:

(i) A review of the Decision by the New Mexico Supreme Court in its establishing, as to the instant case only, that a Judgment previously entered between the party litigants, the State of New Mexico, ex rel. State Highway Department of New Mexico and the predecessor at interest, Maria G. Garcia, the assignor of Alsonso Sanchez and Cecilia Sanchez, the appellees before the New Mexico Supreme Court, in the instant case, did not extinguish all of the rights, title, and interest to the land subject of this litigation of the predecessor and those taking in her stead when said right, title, and interest were all extinguished as set

out in the Judgment of the prior case as follows, to wit:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ...dollars...is just compensation for the lands and interest of the Defendants Maria G. Garcia... actually taken, the property rights impaired and damaged and including also all damages to Defendants' remaining lands and property rights and upon payment thereof will be full and complete payment and satisfaction of any claims Defendants, their successors or assigns, might now or hereafter have..."

thereby denying petitioners of their rights under the Fourteenth Amendment to the United States Constitution by not affording them equal protection or affording them due process of the law for the New Mexico Supreme Court Decision and United States Supreme Court Decisions have, except for this decision, recognized the finality of a Judgment as being res judicata as to the persons or their privies of the issues litigated, and

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(ii) A review of the Decision by the New Mexico Supreme Court in its establishing, as to the instant case only, that a grant by the legislature of a preferential right of redemption by an assignee of a prior owner of the condemned lands, after all of the prior owner's title and interest had been extinguished by prior Court actions and Judgment Decree at the same time said statute was in effect, that granted a preferential right of redemption thereby permitting a right to appellees (in the New Mexico Supreme Court) contrary to the New Mexico Constitution, Article II, Section 18 and Article IV, Section 26 prohibiting said grant of a right and so interpreted by all other New Mexico Supreme Court Decisions. By granting this unconstitutional right, the New Mexico Supreme Court denied these petitioners, by this Decision, the equal protection and due process of the law

pursuant to the Fourteenth Amendment to the United States Constitution. The Decision, for which review is sought, is singular in effect for the New Mexico Supreme Court had to reverse prior New Mexico Supreme Court decisions, without an opinion, along with the New Mexico constitutional provisions appropriate thereto, thereby making this decision to grant said right an anomaly in New Mexico law, thereby denying these appellants equal protection of the law, and

(iii) A review of the Decision of the New Mexico Supreme Court in its establishing, as to the instant case only, that in Special Statutory proceedings, which said statutory proceedings under which the appellees proceeded were to be interpreted to include assignees when said special statutory proceedings excluded assignees from being able to exercise a preferential right of redemption by pro-

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viding only for "former owners, their personal representatives, or heirs" as was permitted here. All New Mexico Supreme Court cases had heretofore held, without equivocation, that as to said special proceedings that the rights and remedies of the parties under special proceedings must be found within the statute itself. By reversing the prior decisions by permitting a right or remedy not included in said special statute, without an opinion to that effect, imposed upon these appellants a violation of their right to the equal protection of the law and due process of the law as provided for in the Fourteenth Amendment to the United States Constitution.

The Decision of the New Mexico Supreme Court cannot be sustained on independent state laws nor can it be sustained other than by affirming the decision of the New Mexico Supreme Court that the

statute granting the preferential right included an assignor and that a Judgment by the District Court of New Mexico was not a finality as to the rights of the parties or their privies as the issues litigated in the prior District Court. The violation of the New Mexico constitutional provisions prohibiting the grant of a right to these assignees in the New Mexico Supreme Court is an additional prohibition against the decision of the New Mexico Supreme Court in granting the preferential right complained of by these petitioners.

(d) The constitutional provision... statutes...which the case involves:

(i) New Mexico Statutes 1953 Compilation, Section 22-9-65,(Page 58 of the 1973 Pocket Supplement for Volume 5 of the New Mexico Statutes, 1953 Compilation...this section of the statute has

since been repealed):

> "OPENING OF BIDS--SALE AWARD.--
> ...The executive officer shall determine and announce the highest and best bidder except that the condemnor shall award the sale to the prior owner or his personal representative or heirs if such prior owner, his personal representative or heirs pay the condemnor an amount equal to the highest bid, including the cost of advertising, within fifteen (15) days after the day of the sale. The condemnor shall award the sale to the highest and best bidder. ..."

(ii) United States Constitution Fourteenth Amendment, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(iii) New Mexico Constitution,

Article IV, Sec. 18 (Page 257 of the New Mexico Statutes, 1953 Compilation, Volume 1):

> "No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied the equal protection of the laws."

(iv) New Mexico Constitution, Article IV, Sec. 26 (Page 316 of the New Mexico Statutes, 1953 Compilation, Volume 1):

> "The legislature shall not grant to any corporation or person, any rights, franchises, privileges, immunities or exceptions, which shall not, upon the same terms and under like conditions, inure equally to all persons or corporations; no exclusive right, franchise, privilege or immunity shall be granted by the legislature or any municipality in this state."

(e) STATEMENT OF CASE

The unsuccessful appellants in the New Mexico Supreme Court were the highest bidders under a New Mexico State Highway Department sale of excess lands with the

bids being regular and conforming to the laws. The successful appellees in the New Mexico Supreme Court tendered the correct money for an award of the sale of the land to them as assignees from the former owner and not as "the former owner or personal representatives of the former owner" as set out in Section 22-9-65, N.M.S.A., 1953 Compilation as set forth in paragraph (d) (i) above.

The District Court heard the case with all of the evidence relied upon by these petitioners having been introduced into the New Mexico District Court proceedings by the assignees of the former owner (appellees in the New Mexico Supreme Court). Said evidence included the Judgment from the prior New Mexico District Court proceedings which set out that said judgment extinguished all of the rights, title, and interest of the prior owner

from whom the assignees (appellees in the New Mexico Supreme Court) took said assignment.

These petitioners appealed the adverse decision by the New Mexico District Court on the basis that these assignees (appellees in the New Mexico Supreme Court) had no interest in the subject property of the sale, for the interest of their assignor had been completely extinguished by said prior District Court proceedings and therefore they could take nothing from this assignor; that these appellees in the New Mexico Supreme Court were not a class of persons for which the statute granted the preferential right, for these special statutory proceedings only granted the preferential right to repurchase to the former owner, personal representatives of the former owner; and finally that the statute granting said preferential right was unconstitutional in that

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it granted this preferential right to the former owner in violation of the New Mexico Constitution which was supported by all New Mexico Supreme Court decisions interpreting said constitutional provision.

The New Mexico Supreme Court issued a Decision, without an opinion, affirming the New Mexico District Court's decision and it is this decision for the above reasons that these petitioners seek review on the basis that the law of New Mexico on these points is so clear that to have decided as it did, the New Mexico Supreme Court Decision was violative of these petitioners' equal protection and right to due process under the Fourteenth Amendment to the United States Constitution.

(f) Stage in proceedings wherein the federal questions sought to be reviewed were raised, method of raising said ques-

tions and the way they were passed upon by the Court with quotations and references is the record or summary thereof, Courts charges and exception thereto.

(i) Point (c) (i), the first question presented for review, the fact that the appellees' rights were all extinguished by the prior New Mexico District Court Judgment was raised and ruled upon in the New Mexico District Court by the motion for taking judicial notice of Santa Fe County Cause Number 42900 by the assignees of the prior owner on lines 1 through 9 of Page 129 of the transcript:

> "MR. BOYD: I would like to ask the Court to take judicial notice of 42900 and 41201, the quiet title suit in conjunction with the condemnation suit in determining the prior owners, and --
>
> "THE COURT: We'll take the adjudication in the condemnation, just forget all the original defendants, and then the judgment in that action, which adjudicated the plaintiff, which was Maria Garcia, is the one that got

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the goodies."

and then on lines 6 through 8, Page 151 of the transcript:

> "I find from the record that -- taking judicial notice of the things we have to, which is the judgment in 42900 relating to this tract, the judgment in this quiet..."

without objection thereby raising the factual issues thereon contained as though pled pursuant to Rule 15(b) New Mexico Rules of Civil Procedure, Section 21-1-1 (15) (b) of the New Mexico Statutes Annotated, 1953 Compilation which materially reads:

> "(b) AMENDMENTS TO CONFORM TO EVIDENCE. ... When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings..."

The matter was also raised by including the copy of the Judgment in New Mexico, Santa Fe County Cause No. 42900 on transcript pages TR-48 through 53 in

conjunction with appellants' requested Findings of Fact and Conclusions of Law at transcript pages Tr-44 paragraph 5; Tr-45 paragraph 7; Tr-46 paragraph 3; Tr-55 paragraph 7; Tr-57 paragraph 3; (See Appendix, page A.1 through A.5) and was raised in the New Mexico Supreme Court in Point II of Appellants' Brief in Chief (See Appendix, page A.6 through A.8) as well as argued by oral argument in the Supreme Court of New Mexico by appellants.

(ii) Point (c) (ii), the second question presented for review, that after the rights of the appellees in the New Mexico Supreme Court were extinguished, it was then an unconstitutional grant of a right prohibited pursuant to Article II, Section 18 and Article IV, Section 26 of the New Mexico Constitution and a denial to these

petitioners of the right of equal protection of the law and due process of the law under the Fourteenth Amendment to the United States Constitution, was raised by these petitioners by first raising the matter in the District Court of New Mexico before a judgment was entered on the Requested Conclusions of Law as set out in the transcript, TR-46, paragraph 6; and TR-57 paragraph 6 (See Appendix A.7 and A.8) and was ruled upon by the New Mexico District Court in its Findings and Judgment attached as Exhibits "C" and "D". This point was raised in the New Mexico Supreme Court by Point II of Appellants' Brief in Chief (See Appendix A.8 through A.10) and argued before the New Mexico Supreme Court before it rendered its Decision on January 15, 1976, as set out in Exhibit "A" as is attached, this Decision being the New Mexico Supreme

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Court's ruling, for no opinion was issued.

(iii) Point (c) (iii), the third question presented for review, that the assignor of the appellees in the New Mexico Supreme Court could not take under the special statute upon which they relied for they were not prior owners, personal representatives or heirs, as was required by the statute and so interpreted under all existing New Mexico law respecting Special Statutory proceedings, and to then grant the assignees a right contrary to New Mexico law as being in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution was raised in the District Court of New Mexico as set out in the transcript on TR-129, lines 10 through 25:

> TR-129 -- "Q (By Mr. Olmstead) Now, Mr. Chavez, you say that you told Mr. Corazzi and others

they could just let anybody with a right of assignment to exercise this redemption right under Section 22-19-62 and under 22-19-65?

"A Of course, each case was an individual case.

"Q Can you answer my question?

"A Yes, I can.

"Q All right.

"A What we advised them was that under that 22-19-65, that anyone -- if the property owner assigned her rights, that it had been the established policy of the Highway Department then as far as the Legal Division is concerned, it was a good transfer.

"Q Was the Legal Division at all interested in getting the highest amount of money possible for this excess property?"

and TR-121, lines 17 through 25 and

TR-122, lines 1 and 2:

TR-121: "Q (By Mr. Boyd) Do numerous types of transactions and conveyances come across your desk on which you have to rule upon?

"A Well, the question comes up -- of course, it has been

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the policy under the -- I think it's 22-9-65 on these assignments and so forth, and the question doesn't come up too often on that particular thing because we have had that statute since 1967, but once in a while there's a little technicality that comes in there, and of course, we -- they

TR-122 "ask us and a lot of times we give them a -- verbal opinions. Once in a while, we write the opinions."

is set out in the Requested Findings of Fact and Conclusions of Law filed by these petitioners on pages TR-45 paragraph 9:

TR-45 paragraph 9. "The plaintiff State Highway Department has refused to honor the high bids of Richard V. Gose and the Honorable Antonio Chavez by quitclaiming said parcels to the respective highest bidders according to law and there are not now facts before this Court that would permit the Plaintiff not to honor the bid of Richard V. Gose and the Honorable Antonio Chavez and convey the title to said parcels upon proper demand and tender of the monies.

and TR-46 paragraph 4 and 5:

TR-46 paragraphs 4 and 5: "Alfonso Sanchez and/or Cecilia

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Sanchez are not prior owners or personal representatives or heirs of such prior owner or owners of either parcel 5-1-EL and parcel 5-1-A-EL and in accordance with Section 22-9-65 N.M.S.A. 1953 Comp. as amended and therefore have no redemptive rights. Pursuant to Section 22-9-65 N.M.S.A. 1953 Comp., the condemnor, the Plaintiff State Highway Department of New Mexico is directed and it shall award the sale to the highest bidder of record, Richard V. Gose and Antonio Chavez.

"5. The sale of this excess land are special statutory proceedings and the remedies of the parties under special statutory proceedings must be found within the statute itself those provisions being according to law that the sale of parcel 5-1-A-EL should be executed upon payment by defendant Richard V. Gose and that the sale of parcel 5-1-EL should according to law be executed upon payment by the Defendant, Antonio Chavez."

TR-56 paragraph 9:

"9. The Plaintiff, State Highway Department has refused to honor the high bids of Richard V. Gose and the Honorable Antonio Chavez by quitclaiming said parcels to the respective highest bidders according to law and there are not now facts before this Court that would permit the Plaintiff

"not to honor the bid of Richard V. Gose and the Honorable Antonio Chavez and convey the title to said parcels upon proper demand and tender of the monies."

TR-57 paragraph 4:

"4. Alfonso Sanchez and/or Cecelia Sanchez are not prior owners or personal representatives or heirs of such prior owner or owners of either parcel 5-1-EL and parcel 5-1-A-EL and in accordance with Section 22-9-65, N.M.S.A. 1953 Comp., the condemnor, the Plaintiff State Highway Department of New Mexico is directed and it shall award the sale to the highest bidder of record, Richard V. Gose and Antonio Chavez."

and was raised in the New Mexico Supreme Court by Point I of Appellants' Brief in Chief and orally presented before the New Mexico Supreme Court before its Decision of January 15, 1976. (See Appendix A.10 through A.13)

(g) Not applicable.

(h) A direct and concise argument amplifying the reasons relied upon in the writ.

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(i) A review of point (c) (i) above is sought respecting the New Mexico Supreme Court's decision which constitutes a ruling against these petitioners' contention that the Judgment previously entered, between the State Highway Department and Maria G. Garcia, the assignor of the appellees in the New Mexico Supreme Court, settled all issues as to any right or claim the appellees in the New Mexico Supreme Court in accordance with any law on the subject in that the Judgment on its face ordered that the compensation under the condemnation proceedings was just compensation for the lands and interests of Maria G. Garcia and full and complete payment and satisfaction of any claims of Maria G. Garcia, her successors and assignees might now or hereafter have. The finality of this Judgment in divesting the assignees of any preferential right of repurchase of

the subject land is set out in an opinion by the New Mexico Supreme Court in the case of The Territory of New Mexico v. Santa Fe Pacific Railroad Co., 10 N.M. 410, which states, that the prior judgment is a finality as to a claim or demand in controversy raised in the second case by the doctrine of estoppel where the second action is prosecuted upon the same claim and demand by the same parties or their privies, and where a second action is prosecuted upon a different claim or demand but by the same parties or their privies, as was done in the instant case. This holding is from the United States Supreme Court case Cromwell v. County of Sac, 94 U.S. 351.

The New Mexico Rules of Civil Procedure, Rule 15 (b) which is the same as the Federal Rules of Procedure for District Court Rule 15 (b) as contained in Section 22-1-1 (15) (b) New Mexico Statutes 1953

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Compilation as amended, Page 272 of Volume 4 of the New Mexico Statutes, 1953 Compilation provides that:

> "(b) AMENDMENTS TO CONFORM TO THE EVIDENCE. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. ..."

The Judgment relied upon from the prior case, Santa Fe County Cause Number 42900 was evidence introduced by the assignees in the New Mexico Supreme Court without objection thereby procedurally raising the doctrine of estoppel or res judicata against the assignee of Maria G. Garcia obtaining any right or interest to the exercising of a preferential right of repurchase of the land, the subject of both of the District Court's litigations.

The above, setting out the New Mexico

law on the finality of a Judgment, and there being no way for the New Mexico Supreme Court to have decided as they did against these petitioners without reversing said law, without opinion, these petitioners have thereby been denied the equal protection of the law and denied due process under the Fourteenth Amendment to the United States Constitution with the constitutional interpretation by the United States Supreme Court tending to support this position being as follows:

Truax v. Corigan, 257 U.S. 312 wherein, the United States Supreme Court by Mr. Chief Justice Taft, in a labor dispute matter, reversed the Supreme Court of Arizona which upheld an Arizona statute denying the Court authority to grant to the class of persons of which the plaintiff was one, injunctive

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relief from picketing and other labor related acts against him. The case was remanded to the Supreme Court of Arizona for further proceedings not inconsistent with the opinion to the effect that the Plaintiff was denied the equal protection of the law under the Fourteenth Amendment of the Constitution, along with the due process clause. The United States Supreme Court found that the plaintiff was denied his day in Court and the benefit of general law, which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry and renders judgment only after trial so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. It found that, except for the fact that these people had been employees of the Plaintiff, he could

have sought under Arizona law an injunction had the matter been tried with the Court not being denied authority in accordance with that particular statute.

Though the Fourteenth Amendment to the United States Constitution does not go as far as Article IV, Section 26 of the New Mexico Constitution, it nevertheless sets some of the basis for an interpretation of Article IV, Section 26, of the New Mexico Constitution. In the Truax v. Corigan, supra, case, the Supreme Court of the United States on page 332 therein set out:

> "Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws. The framers and adopters of this Amendment were not content to depend on a mere minimum secured

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"by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They, therefore, embodied that spirit in a specific guarantee".

"The guarantee was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process. Mr. Justice Field, delivering the opinion of this Court in Barbier v. Connolly, 113 U.S. 27, 32, of the Equality Clause, said 'Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.' In Hayes v. Missouri, 120 U.S. 68, the Court speaking through the same Justice, said the Fourteenth Amendment 'does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.' Thus, the guarantee was

"intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity (exemption from performing duties the law requires other citizens to perform) granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." (Parenthesized and emphasis added).

"Mr. Justice Matthews, in Yick Wo v. Hopkins, 118 U.S. 356, 369, speaking for the Court of both the Due Process and the Equality Clause of the Fourteenth Amendment, said:

> 'These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.' (Emphasis added).

"The accuracy and comprehensive felicity of this description of the effect of the equality clause are shown by the frequency with which it has been quoted in the decisions of this Court. It emphasizes the additional guarantee of a

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"right which the clause has conferred beyond the requirement of due process.

"With these views of the meaning of the equality clause, it does not seem possible to escape the conclusion that by the clauses of paragraph 1464 of the Revised Statutes of Arizona, here relied on by the Defendants, as construed by its Supreme Court, the Plaintiffs have been deprived of the equal protection of the law."

(ii) A review of (c) (ii) above is sought respecting the New Mexico Supreme Court's decision effectively ruling as to this instant case only that the legislature had authority to grant to a person a right which was not upon the same terms and under like conditions inure equally to all persons or an exclusive right granted by the legislature contrary to the express provisions of Article IV, Section 26 of the New Mexico Constitution, Page 316, Volume 1, New Mexico Statutes, 1953 Compilation and Article II, Section 18 of the New Mexico

Constitution, Page 257, Volume 1, New Mexico Statutes Annotated assuring that no person shall be deprived of property without due process of law nor be denied the equal protection of the laws. This ruling is also contrary to the New Mexico Supreme Court's decisions including Franklin Fire Insurance Co. v. Montoya, et al, 32 N.M. 88, 251 Pac. 390, wherein the New Mexico Supreme Court of New Mexico found that the restrictions by statute of an insurance company to have more than one insurance agent in each city, town, or village was violative of Article II, Section 18 and Article IV, Section 26 of the Constitution by said statutes depriving some persons of property without due process and granting special privileges to others. The New Mexico Supreme Court had also found in State, ex rel., Game Commission v. Red River Valley Company,

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51 N.M. 207, 182 P.2d 421, that the waters of Conchas Reservoir, being public waters, cannot be closed for private use though the issuance of private permits by each owner contiguous to the said streams, for to permit the private use of said properties would be granting a special right or privilege to certain persons which were not under the same terms and under like conditions equally available to all persons and therefore a violation of Article IV, Section 26 of the New Mexico Constitution.

The above being the New Mexico law on the constitutional interpretation of the New Mexico Constitution addressed to the legislature granting of a right or privilege and though this issue should not have to be raised in view of the final judgment between the parties and the lack of authority for granting a preferential right of redemption to the assignee of

Maria G. Garcia disposing of all the rights the assignees of Maria G. Garcia might have to the subject land, the only way this Court could award the assignee of Maria G. Garcia the preferential right of repurchase would be to grant them a new right after the Judgment had extinguished all of their interest in said land, which new right is specifically prohibited under New Mexico law. By so granting this preferential right to the assignees of Maria G. Garcia contrary to existing law, these petitioners have been denied the equal protection of the law and denied due process under the Fourteenth Amendment to the United States Constitution with the constitutional interpretation by the United States Supreme Court tending to support these petitioners' position being the Traux v. Corigan case, supra, as pointed out in the prior

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section (h) (i), which is incorporated herein by reference.

(iii) A review of Point (c) (iii) above is sought respecting the New Mexico Supreme Court's Decision which constitutes a ruling that the New Mexico statute granting the preferential right of repurchase granted this right to an assignee of the former owner as well as the classes of persons set out in the statute, namely a former owner, personal representative, or heir. Before the New Mexico Court could get to Points (i) and (ii) above, it was necessary for them to find first that the assignee of the former owner Maria G. Garcia was one of the persons granted the right under the statutes when on its face, Section 22-9-65, N.M.S.A., 1953 Comp., Page 58, 1973 Pocket Supplement for Volume 5 New Mexico Statutes Annotated (now repealed) states:

"...The executive officer shall determine and announce the highest and best bidder except that the condemnor shall award the sale to the prior owner or his personal representative or heirs if such prior owner, his personal representative or heirs pay the condemnor an amount equal to the highest bid, including the costs of advertising within fifteen (15) days after the day of sale. The condemnor shall award the sale to the highest and best bidder...".

These special statutory proceedings have been interpreted by numerous New Mexico Supreme Court cases which include City of Tucumcari v. Magnolia Petroleum Co., 57 N.M. 392, 259 P.2d 351, and State v. Rosenweld, 24 N.M. 584, 170 Pac. 22 as defining these eminent domain statutes which include Section 22-9-65, supra, as special statutory proceedings as follows:

"The phrase 'special proceedings' within its proper definition, is a generis term for all civil remedies in courts of justice which are not ordinary actions. * * * Where the law confers a right, and authorizes a

"special application to a court to enforce it, the proceeding is special within the ordinary meaning of the term 'special proceedings'."

The New Mexico Supreme Court in City of Tucumcari v. Magnolia Petroleum Co., supra, further found:

"As long ago as Gonzales v. Gallegos, 10 N.M. 372, 62 Pac. 1103, we pointed out the distinction between 'Special Proceedings' and 'Civil actions' and held that the procedure applicable to the civil actions generally does not apply to the former and that the rights and remedies of the parties under special proceedings must be found within the statute itself."

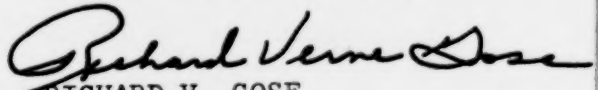
Other New Mexico Supreme Court cases affirming the above include Gallup South-West Coal Co., v. Gallup American Coal Co., 39 N.M. 94, 40 P.2d 627 and State of New Mexico, ex rel. State Highway Commission v. Burkes, 79 N.M. 373, 443 P.2d 366.

The above New Mexico law excluding the assignee of a prior owner from the class of persons taking a right granted

under a special statute for which a preferential right is granted to former owners, their personal representatives, or their heirs, had to be denied or reversed by the New Mexico Supreme Court before the grant of the preferential right of purchase of the property could be awarded to the assignee of the prior owner and by granting this right without reversing existing law by specific opinion, the New Mexico Supreme Court has denied these petitioners their rights to equal protection of the law and further denied them due process of law under the terms of the Fourteenth Amendment to the United States Constitution with the interpretation by the United States Supreme Court tending to support petitioners position being the Truax v. Corigan case, supra, as pointed out in the prior section (h) (i) which is

incorporated herein by reference.

Respectfully submitted,



RICHARD V. GOSE
Attorney at Law
Attorney for
Petitioners
Honorable Antonio
Chavez and
Richard V. Gose
P.O. Box 1391
Santa Fe, New Mexico
87501

A P P E N D I X

Tr-48 through Tr-53:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT SITTING WITHIN AND FOR SANTA FE COUNTY, NEW MEXICO

STATE OF NEW MEXICO, ex rel., STATE HIGHWAY DEPARTMENT OF NEW MEXICO,

Petitioner,

vs. No. 42,900

RITA MOYA, et al.,

Defendants.

JUDGMENT

Maria G. Garcia, Sofia G. Chavez, George Chavez, The Estate of Luciano Garcia, Deceased, The Unknown Heirs of Luciano Garcia, Deceased, Victoriano Garcia and Juan Garcia, Tracts 5-1-EL and 5-1-A-El

* * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lands and premises described in the Petition as filed in this Court belonging to the above-named Defendants, to-wit:

* * *

be, and are hereby condemned and appropriated for the use and purpose set forth in the Petition on file in this cause and that Petitioner be, and it hereby is, adjudged to be the owner in fee simple of the above-described property upon payment in full of all moneys due by the terms of this judgment and upon the recordation of this judgment with the County Clerk of Santa Fe County, New Mexico.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Fifty Two Thousand Five Hundred Dollars ($52,500) is just compensation for the lands and interest of the Defendants Maria G. Garcia, Sofia G. Chavez, George Chavez, The Estate of Luciano Garcia, Deceased, The Unknown Heirs of Luciano Garcia, Deceased, Victoriano Garcia and Juan Garcia, actually taken, the property rights

impaired and damaged and including also all damages to the Defendants' remaining lands and property rights and upon payment thereof will be full and complete payment and satisfaction of any claims these Defendants, their successors or assigns, might now or hereafter have by reason of the condemning of the above-described lands and of all damages to lands immediately adjacent thereto, by reason of this condemnation, which adjacent lands might not have been actually taken, but may have been injuriously affected by this condemnation.

* * *

/s/ Santiago E. Campos
DISTRICT JUDGE

APPROVED:

NEW MEXICO STATE HIGHWAY DEPARTMENT

By /s/ Richard T. Whitley
RICHARD T. WHITLEY, SHD ASSISTANT
Attorney General
Attorney for Petitioner
P. O. Box 1149

Santa Fe, New Mexico

Excepted and Objected To:

/s/ Alfonso G. Sanchez
ALFONSO G. SANCHEZ
Attorney for Defendant
Maria G. Garcia
1966 Cerrillos Road
Santa Fe, New Mexico 87501

Tr-44 paragraph 5:

"5. Pursuant to the above bids for the purchase of said parcels were received from Richard V. Gose and from the Honorable Antonio E. Chavez which bids are correct in order and form and accompanied by the correct amount of the required deposit. That parcels 5-1-EL and 5-1-A-EL were acquired by the Plaintiff, State Highway Department of New Mexico in accordance with its right and power of eminent domain in Cause No. 42900 in the District Court of the First Judicial District for the County of Santa Fe, with the case captioned, State of New Mexico, ex rel., State Highway Department of New Mexico vs. Rita Moya, et al., as Defendants, and that a judgment was duly entered in said cause of action as to Parcels 5-1-EL and 5-1-A-EL on or about November 19, 1971, in the District Court of the County of Santa Fe, with Plaintiff, State of New Mexico, ex rel., State Highway Department being represented by Richard T. Whitley, E. E. Chavez, et al., being represented by Alfonso

G. Sanchez, and further that this Court, sitting in the County of Santa Fe in Cause No. 48684 took judicial notice of said condemnation action which included therein provisions as follows, all as set out on Exhibit A herein in paragraph marked paragraph five therein."

TR-45 paragraph 7:

"7. That at the time that any document was issued by Maria G. Garcia, assigning any right, title or interest that she had as to parcels 5-1-EL and 5-1-A-EL, all of Maria G. Garcia's right, title and interest had been extinguished and she had nothing to assign to Alfonso G. Sanchez and Cecelia Sanchez, and therefore they could take nothing in this cause of action."

Tr-46 paragraph 3:

"3. Alfonso Sanchez or Cecelia Sanchez took nothing from Maria G. Garcia by virtue of the purported quitclaim deed or assignment of her interest, for Maria G. Garcia had nothing to assign at the time that instrument was executed that is recognizable at law in accordance with a condemnation proceeding in the District Court Cause No. 42900 as set out hereinabove."

TR-55 paragraph 7:

"7. That at the time that any document was issued by Maria G. Garcia,

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"assigning any right, title or interest that she had as to parcels 5-1-EL and 5-1-A-EL, all of Maria G. Garcia's right, title and interest had been extinguished and she had nothing to assign to Alfonso G. Sanchez and Cecelia Sanchez, and therefore they could take nothing in this cause of action."

Tr-57 paragraph 3:

"3. Alfonso Sanchez or Cecelia Sanchez took nothing from Maria G. Garcia by virtue of the purported quitclaim deed or assignment of her interest, for Maria G. Garcia had nothing to assign at the time that instrument was executed that is recognizable at law in accordance with a condemnation proceeding in the District Court Cause No. 42900 as set out hereinbefore."

Pages 27 through 29 of Appellants' Brief in Chief:

POINT II

"AFTER THE PRIOR OWNER OF THE REAL PROPERTY, SUBJECT TO THIS LITIGATION, HAS BEEN COMPLETELY AND JUSTLY COMPENSATED FOR THE LAND TAKEN, AND DIVESTED OF ALL RIGHT, TITLE OR INTEREST THERETO, BY THE CONDEMNOR, IT IS AN UNCONSTITUTIONAL GRANT TO LEGISLATIVELY CREATE FOR THE PRIOR OWNER OF THE PROPERTY ANY RIGHT OR TITLE TO SAID REAL PROPERTY.

* * *

This adjudication and decree (Tr-48 through 53) is the full and complete payment in satisfaction of any claims that the Defendants (including Maria G. Garcia), their successors or assigns might now or hereafter have by reason of the condemning of the above-described lands which are the subject of this litigation, and totally compensates them for the taking of the right title and interest to the land being conveyed to the State of New Mexico, ex. rel., State Highway Department in accordance with the decree . . ."

TR-46 paragraph 6:

> "6. All of the right, title and interest, of parcels 5-1-A-EL and 5-1-EL having been extinguished can completely compensated for by the Plaintiff State of New Mexico, ex rel., State Highway Department of New Mexico it is an unconstitutional grant of a valuable property right or right of refusal as is hercin being attempted by Alfonso Sanchez and Cecelia Sanchez and the Plaintiff."

Tr-57 paragraph 6:

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"6. All of the right, title and interest of parcels 5-1-A-EL and 5-1-EL having been extinguished and completely compensated for by the Plaintiff State of New Mexico ex rel., State Highway Department of New Mexico it is an unconstitutional grant of a valuable property right or right of refusal as is herein being attempted by Alfonso Sanchez and Cecelia Sanchez and the Plaintiff."

Pages 20 through 36 of Appellants' Brief in Chief:

POINT II

"When the Legislature created, under Section 22-9-65, supra, a procedure permitting the former owner, his personal representative or heirs to deposit with the Condemnor an amount equal to the highest bid plus the costs of advertising within fifteen (15) days from the date of sale and to create a superior right or title to the highest bidder to the property sold, it created a non-vested interest in the lands subject to two conditions precedent by the condemnor and another condition precedent by the

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former owner, his personal representatives or heirs, before a right to the property is created, which is in violation of Article IV, Section 26 of the New Mexico Constitution, said constitutional provision reads as follows:

> "The legislature shall not grant to any corporation or person, any right, franchises, privileges, immunities or exceptions, which shall not, upon the same terms and conditions, inure equally to all persons or corporations; no exclusive right, franchise, privilege or immunity shall be granted by the legislature or any municipality in this state."

* * *

The Supreme Court of the United States in the Arizona case of Truax v. Corigan, 257 U.S. 312, in an opinion addressed to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which was aimed at undue favor in individual or class privilege, on the one hand, and at hostile

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discrimination or the oppression by inequality on the other, . . ."

Pages 6 through 10 of Appellants' Brief in Chief:

POINT I

THE STATUTES GOVERNING THE SALE OF EXCESS LANDS BY THE NEW MEXICO STATE HIGHWAY DEPARTMENT ARE SPECIAL STATUTORY PROCEEDINGS WITH THE RIGHTS AND REMEDIES OF THE PARTIES BEING EXCLUSIVE THEREIN AND THEREFORE THE APPELLEES DID NOT CREATE A RIGHT OR TITLE TO THE REAL PROPERTY SUBJECT OF THIS SUIT IN THAT THEY WERE NEITHER PRIOR OWNERS, PERSONAL REPRESENTATIVES NO HEIRS OF THE PRIOR OWNER. THEIR ATTEMPTED REDEMPTION OF THE PROPERTY THEREFORE FAILS.

* * *

The above mentioned parcels were parcels of land owned by the State of New Mexico and placed for sale in accordance with the statutes under Eminent Domain, designated as Sections 22-9-62 through 22-9-67 NMSA, 1953 Comp., which are special statutes pertaining only to lands that have been acquired by the State through condemnation proceedings in excess of the need of the State for roads

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and, even then, are further subdivided and do not include all of this class of land but only those lands so condemned in excess of the needs of the State which are outside the boundary of an incorporated municipality.

The persons involved in the classification as set out under the above referred to Section of the statute are bidders who are not limited as to class but are those who have posted the highest and best bid for the property, of which Richard V. Gose and Antonio A. Chavez are a part thereof. The prior owners or their personal representative or heirs of said prior owner are a classification limited to prior owners of the land from whom the land was taken, which is further subdivided by excluding prior owners or their personal representative or heirs of the prior owner for lands that are wholly within the boundary of

incorporated municipalities.

The persons involved, then, as prior owners, personal representatives or heirs to the prior owners are a special class of people, that is not uniformly designated across the State of New Mexico and does not include equally the citizens of New Mexico, and the lands contained in the sale are condemned State lands of the State Highway Department outside of incorporated municipalities which are also a class of State-owned lands not uniformly treated throughout the State of New Mexico, not uniformly treated as to State lands being sold in any subdivision of the State of New Mexico."

* * *

Chief Justice Sadler in City of Tucumcari v. Magnolia Petroleum Company, 57 N.M. 302, 259 P.2d 351, in distinguishing a special statutory proceeding from a civil action relied upon the decision of

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State v. Rosenwald, 23 N.M. 514, 170 P. 44, which had approvingly adopted the quotation from Schuster v. Schuster, 34 Minn. 403, 57 NW 1014, as follows:

> "The phrase 'special proceedings,' within its proper definition, is a generic term for all civil remedies in courts of justice which are not ordinary actions. ***Where the law confers a right, and authorizes a special application to a court to enforce it, the proceeding is special within the ordinary meaning of the term 'special proceedings.'"

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IN THE SUPREME COURT OF THE STATE OF
NEW MEXICO
Thursday, January 15, 1976

No. 10465

STATE OF NEW MEXICO, ex rel.
STATE HIGHWAY DEPARTMENT OF
NEW MEXICO,

Plaintiff-Appellee,

EXHIBIT "A"

vs.

THE HON. ANTONIO CHAVEZ and
RICHARD V. GOSE,

Defendants-Appellants,

vs.

RITA MOYA, et al

Defendants-Appellees.

APPEAL FROM DISTRICT COURT
SANTA FE COUNTY

DECISION

The Judgment of the District Court of the First Judicial District is affirmed.

IT IS SO ORDERED.

/s/ Dan Sosa, Jr.
Dan Sosa, Jr., Justice

WE CONCUR:

/s/ John B. McManus, Jr.
John B. McManus, Jr., Justice

/s/ Donnan Stephenson
Donnan Stephenson, Justice

I certify the above to be a true copy.

Richard Verne Gose

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EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE No. 10465

THE STATE OF NEW MEXICO TO THE DISTRICT COURT sitting within and for the County of Santa Fe, GREETING:

WHEREAS, in a certain cause lately pending before you, numbered 48684 on your Civil Docket, wherein State, ex rel. State Highway Department was Plaintiff, Rita Moya, et al were Defendants by your consideration in that behalf judgment was entered aginst said Defendants Antonio Chavez and Richard V. Gose; and

WHEREAS, said cause and judgment were afterwards brought into our Supreme Court for review by said Defendants by appeal, whereupon such proceedings were had that on January 15, 1976, a Deciaion was entered by said Supreme Court affirming your judgment aforesaid, and remanding said

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cause to you.

NOW THEREFORE, this cause is hereby remanded to you for such further proceedings therein as may be proper, if any, consistent and in conformity with said Decision of this Court.

WITNESS, The Honorable LaFel E. Oman, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 28th day of January, 1976.

/s/ Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico

I certify the above to be a true copy.

Richard Verne Gose

EXHIBIT "C"

STATE OF NEW MEXICO
COUNTY OF SANTA FE
IN THE DISTRICT COURT

STATE OF NEW MEXICI, ex rel., STATE HIGHWAY DEAPRTMENT OF NEW MEXICO, Plaintiff, -vs- RITA MOYA, et al., The Honorable Antonio Chavez, Alfonso Sanchez, Cecilia Sanchez & Richard V. Gose. Defendants.	No. 48,684

COURT'S FINDING OF FACT AND CONCLUSIONS OF LAW

This cause was tried by the Court without a jury, and the Court for its decision herein makes the following findings and conclusions:

FINDINGS OF FACT

1. Maria G. Garcia, on August 17, 1973, conveyed to the defendants Alfonso G. Sanchez et ux, any interest that she had in the land, the subject matter of this suit.

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2. Alfonso Sanchez and his wife, on July 10, 1974, deposited with the State Highway Department the sums required to meet the highest bids offered and the sale costs, within fifteen days after the bids were opened.

3. The Highway Department has heretofore recognized assignments of the interests of prior owners and granted preferential rights to assignees with the same standing as prior owners, to meet highest and best bids to surplus lands sold by that agency pursuant to 22-9-63 et seq. NMSA 1953.

From the foregoing facts, as well as those not in dispute, the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

1. The assignment and quitclaim deed by Maria G. Garcia of her interest in the

land was a valid conveyance of the preferential right that she might have exercised afforded her under Section 22-9-65 NMSA 1953 as a prior owner.

2. By the exercise of the preferential right by Alfonso Sanchez and his wife, they are entitled to a conveyance of the two tracts from the State Highway Commission as condemnor.

3. The defendants Gose and Chavez are entitled to a return of their bonds and deposits as unsuccessful bidders.

Findings and Conclusions submitted by the parties contrary to those adopted by the Court are refused.

/s/ Frank B. Zinn
DISTRICT JUDGE

I certify the above to be a true copy.

Richard Verne Gose
RICHARD VERNE GOSE

STATE OF NEW MEXICO
COUNTY OF SANTA FE
IN THE DISTRICT COURT

STATE OF NEW MEXICO, ex rel., STATE HIGHWAY DEPARTMENT OF NEW MEXICO,

Plaintiff,

-vs-

No. 48,684

RITA MOYA, et al., The Honorable Antonio Chavez, Alfonso Sanchez, Cecilia Sanchez & Richard V. Gose,

Defendants.

EXHIBIT "D"

JUDGMENT

The Court having rendered its decision in this cause in Findings of Fact and Conclusions of Law,

IT IS THEREFORE ORDERED AND ADJUDGED that the Petitioner is obliged to convey to the Defendants Alfonso G. Sanchez and Cecilia Sanchez, the tracts of land, which for the purposes of this action were referred to as tracts 5 - 1 - EL and 5 - 1 - A-EL, and further that Petitioner is

obliged to refund to the Defendants Richard V. Gose and Antonio E. Chavez the sums they have tendered with their bids, and the defendants Gose and Chavez are entitled to no further relief in this cause.

/s/ Frank B. Zinn
DISTRICT JUDGE

I certify the above to be a true copy.

Richard V. Gose